

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814

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FINAL TEXT OF REGULATON

Title 10. Investment
Chapter 5. Insurance Commissioner

§ 2651.1. Definitions

The following definitions shall apply to Subchapter 4.9.

(a) "Administrative Hearing Bureau" means that office within the office of the Commissioner at 45 Fremont Street, 22nd Floor, San Francisco, CA 94105 and, except where otherwise specified in this subchapter, designated for receipt of all pleadings filed pursuant to this subchapter.

(b) "Applicant" means the insurer presenting, on the form prescribed by the Commissioner and specified in section 2648.4, an application to

change any rate pursuant to California Insurance Code section 1861.05(b).

(c) "Application" means the form prescribed by the Commissioner and specified in section 2648.4, together with all supporting information included with that form, which every insurer seeking to change any rate pursuant to California Insurance Code section 1861.05(b) must provide.

(d) "Day", unless otherwise specified in these regulations, means a calendar day. "Business days" include all days except Saturdays, Sundays, and any holiday set forth in California Government Code section 6700.

The time within which any pleading may be filed or served shall exclude the first day and include the last day; however, when the last day falls on a Saturday, Sunday or holiday the time computation shall exclude that day and include the next business day.

(e) "Filing" means the act of delivery of a paper pleading to the Administrative Hearing Bureau. An original and four copies of each pleading shall be filed with the Administrative Hearing Bureau. A specific pleading may be filed by facsimile or electronic transmission only when authorized by the administrative law judge.

(f) "Party" means the insurer whose rates are the subject of the proceeding, any person whose petition to intervene in the proceeding has been granted pursuant to section 2661.3(g), and the Department.

(g) "Pleading" means any petition, notice of hearing, notice of defense, answer, motion, request, response, brief, or other formal document filed with the Administrative Hearing Bureau pursuant to this subchapter. The original of each pleading shall be signed by each party or the party's attorney or representative.

(h) "Proceeding" means any action conducted pursuant to Article 10 of Chapter 9 of Part 2 of Division 1 of the California Insurance Code, entitled "Reduction and Control of Insurance Rates," including a rate proceeding established upon the submission of a petition for hearing pursuant to California Insurance Code section 1861.05 and section 2653.1 of this subchapter.

(i) "Service" means to provide a copy of a pleading to every other party in the proceeding in conformity with California Code of Civil Procedure sections 1011 and 1013. When a party files a pleading, the party shall concurrently serve that pleading on all other parties in the proceeding.

All filed pleadings shall be accompanied by an original declaration of service in conformity with California Code of Civil Procedure sections 1011 and 1013. All served pleadings shall be accompanied by a copy of the declaration of service. An employee of a party may sign a declaration of service.

A specific pleading may be served by facsimile or electronic transmission when authorized by the receiving party.

A sample declaration of service form can be found in section 2623.9.

(j) "Settlement" means an agreement among some or all of the parties to a proceeding on a mutually acceptable outcome to the proceeding.

(k) "Stipulation" means an agreement among some or all of the parties to a proceeding on the resolution of any issue of fact or the applicability of any provision of law material to the proceeding.

(l) "Submit" means the act of delivery of a pleading to the Rate Enforcement Bureau.

AUTHORITY:

Note: Authority cited: Sections 1861.05 and 1861.055, Insurance Code, CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.05(c), 1861.055 and 1861.08, Insurance Code, CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989),

20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

§ 2653.6. Withdrawal of Application

(a) After a petition for hearing has been submitted or after a hearing has been noticed, an insurer may not withdraw its rate or class plan application without the Commissioner's approval.

(b) An insurer desiring to withdraw an application shall submit a request to withdraw its rate or class plan application. When a request to withdraw is submitted, the insurer shall serve a copy on each petitioner named in the petition.

(c) A petition for a hearing may, within five (5) days of submission of the request to withdraw, submit a response to a request to withdraw.

(d) If the Commissioner determines that a withdrawal of the insurer's application is justified, the Commissioner shall issue an order of withdrawal.

AUTHORITY:

Note: Authority cited: Sections 1861.05, 1861.055, and 1861.10, Insurance Code, CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.05(a), 1861.055 and 1861.10(a) and (b), Insurance Code, CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

§ 2661.1. Definitions

The following definitions shall apply to Articles 13 and 14 of this subchapter.

(a) "Advocacy Fees" means costs, incurred or billed, by a party for the services of an advocate in the proceeding. An advocate need not be an attorney. Advocacy fees shall not exceed market rates as defined in this section.

(b) "Compensation" means payment for all or part of advocacy fees, witness fees, and other expenses of participation and intervention in any rate hearing or proceeding other than a rate hearing.

(c) "Market Rate" means, with respect to advocacy and witness fees, the prevailing rate for comparable services in the private sector in the Los Angeles and San Francisco Bay Areas at the time of the Commissioner's decision awarding compensation for attorney advocates, non-attorney advocates, or experts with similar experience, skill and ability. Billing rates shall not exceed the market rate.

(d) "Other Expenses" means reasonable, actual out-of-pocket costs of an intervenor or petitioner. Out-of-pocket costs include but are not limited to expenses such as travel costs, transcript charges, postage charges, overnight delivery charges, telephone charges and copying expenses. Out-of-pocket costs also includes the costs incurred in preparing a request or amended request for award, defined in sections 2662.3 and 2662.4. The intervenor or petitioner has the burden of substantiating any costs incurred, including providing supporting documentation as requested by the Public Advisor.

(e) "Proceeding" includes those proceedings set forth in Insurance Code Section 1861.10(a).

(f) "Proceeding Other Than a Rate ~~Hearing~~ Proceeding" means any proceeding, including those described in subdivision (e) above, conducted pursuant to Chapter 9 of Part 2 of Division 1 of the Insurance Code which is not a rate ~~hearing~~ proceeding as defined in this section.

(g) "Public Advisor" means that official of the Department of Insurance who monitors and assists participation by members of the public in the Department of Insurance's proceedings. The Public Advisor shall not represent any member of the public and shall not advocate any substantive position on behalf of the public on any issues before the Commissioner.

(h) "Rate ~~Hearing~~ Proceeding" means any proceeding conducted pursuant to Insurance Code Sections 1861.01 and 1861.05. For purposes of section 1861.05, a "rate proceeding" is established upon the submission of a petition for hearing in accordance with section 2653.1 of this subchapter, or if no petition for hearing is filed, upon notice of hearing.

(i) "Rate Hearing" means a hearing noticed by the Commissioner on his own motion or in response to a petition for hearing pursuant to Insurance Code section 1861.05, which is conducted pursuant to the applicable procedural requirements of Insurance Code section 1861.08, and subchapters 4.8 and 4.9 of this chapter.

(j) "Represents the Interests of Consumers" means that the intervenor represents the interests of individual insurance consumer[s], or the intervenor is a group organized for the purpose of consumer protection as demonstrated by, but is not limited to, a history of representing consumers in administrative, legislative or judicial proceedings.

A party which represents, in whole or in part, any entity regulated by the Commissioner shall not be eligible for compensation. However, nothing in this subsection shall be construed to prohibit any person from intervening or participating if that person is not seeking compensation.

(k) "Substantial Contribution" means that the intervenor substantially contributed, as a whole, to a decision, order, regulation, or other action of the Commissioner by presenting

relevant issues, evidence, or arguments which were separate and distinct from those emphasized by the Department of Insurance staff or any other party, such that the intervenor's participation resulted in more relevant, credible, and non-frivolous information being available for the Commissioner to make his or her decision than would have been available to a Commissioner had the intervenor not participated. A substantial contribution may be demonstrated without regard to whether a petition for hearing is granted or denied.

(k1) "Witness Fees" means recorded or billed costs for a witness, together with associated expenses. Costs and expenses for a witness shall not exceed market rate as defined in this section.

AUTHORITY:

Note: Authority cited: Section 1861.10, Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal. Rptr. 2d 807, 847 (1994). Reference: Sections 1861.10(a) and 1861.10(b), Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company et al. v. John Garamendi 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807 (1994).

§ 2661.3. Procedure for Intervention in a Rate ~~Hearing~~ or Class Plan Proceeding

(a) A person desiring to intervene and become a party to a rate ~~hearing~~ or class plan proceeding shall file a petition to intervene which shall be drafted in compliance with sections 2652.1-2652.4 of this subchapter. A person who petitions for a hearing may combine a petition to intervene with a petition for hearing in one pleading.

(b) The Petition shall cite the law authorizing the proposed intervention and shall contain the petitioner's interest in the proceeding, the specific issues to be raised and the positions to be taken on each issue to the extent then known, and the name, address, and telephone number of the petitioner. The verified petition shall include a statement that the intervenor or advocate will be able to attend and participate in the proceeding without delaying the proceeding or any other proceedings before the Commissioner.

(c) The Petition shall also state whether the petitioner intends to seek compensation in the proceeding, and, if so, contain an itemized estimated budget for the participation in the proceeding, which shall set forth the following:

(1) separate listings of the rates for each attorney advocate or non-attorney advocate, including:

(A) the names of each attorney advocate or non-attorney advocate,

(B) the rates to be claimed for each attorney advocate or non-attorney advocate,

(C) a description of the work to be performed by each attorney advocate or non-attorney advocate, an estimate of the time to be spent to perform that work and the rates, fees and costs associated with that work; and,

(2) separate listings of the rates for each witness, including:

(A) the names of each witness and their areas of expertise,

(B) the rates to be claimed for each witness,

(C) a description of the work to be performed by each witness, an estimate of the time to be spent to perform that work and the rates, fees and costs associated with that work;

Rates contained in the estimated budget shall not exceed market rates. Submission of the budget shall not guarantee the payment of the dollar amounts set forth in the budget. The lack of objection to any item in the budget shall not imply approval of the budget.

(d) An amended budget shall be submitted as soon as possible when the intervenor learns that the total estimated budget amount increases by \$ 10,000 or more.

(e) A Petition to Intervene ~~shall be in a rate or class plan proceeding~~ may be submitted to the Rate Enforcement Bureau concurrently with a petition for hearing submitted pursuant to section 2653.1 of this subchapter or filed with the Administrative Hearing Bureau after a hearing is granted, and shall be considered an "additional pleading" within the meaning of Government Code Section 11507.6. A copy of the Petition to Intervene shall be served on the Public Advisor and all of the parties to the proceeding. A Petition to Participate shall be submitted to the contact person for the proceeding, and served on the Public Advisor.

(f) Within ~~ten~~five (40~~5~~) days after filing of the Petition to Intervene, any other party may file a response to the Petition to Intervene. Any party claiming that the petitioner does not represent the interests of consumers shall so state in the response, which shall include any supporting documentation. The petitioner may reply to any allegation in the response and may reply to the allegation that it does not represent the interests of consumers within ~~eight~~three (8~~3~~) days of filing of the response.

(g) If a person who petitions for a hearing meets the requirements of this section, represents the interests of consumers and is otherwise eligible to seek compensation in proceedings before the Department pursuant to Insurance Code section 1861.10(b) and section 2662.2 of this subchapter, that person's Petition to Intervene shall be granted within fifteen (15) days of its submission. If a petition for a hearing is granted, the administrative law judge shall rule on the any Petition to Intervene subsequently filed by any person within 20 days of its filing with the Administrative Hearing Bureau.

(h) No person whose petition has been granted shall be permitted to reopen matters decided before the petition is granted without a showing of good cause.

AUTHORITY:

Note: Authority cited: Section 1861.10, Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal. Rptr. 2d 807, 847 (1994). Reference: Sections 1861.10(a) and 1861.10(b), Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company et al. v. John Garamendi 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807 (1994).

§ 2662.1. Purpose

The purpose of this Article is to establish procedures for awarding advocacy fees, witness fees and other expenses to petitioners, intervenors and participants in proceedings, including proceedings other than rate ~~hearings~~proceedings, before the Insurance Commissioner in accordance with Section 1861.10(b) of the Insurance Code. The definitions set forth in section 2666.1 apply to Article 14 of this subchapter.

AUTHORITY:

Note: Authority cited: Section 1861.10, Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal. Rptr. 2d 807, 847 (1994). Reference: Sections 1861.10(a) and 1861.10(b), Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company et al. v. John Garamendi 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807 (1994).

§ 2662.3. Request for Award

(a) A petitioner, intervenor or participant whose Petition to Intervene or Participate has been granted and who has been found eligible to seek compensation may submit to the Public Advisor, within 30 days after the service of the order, decision, regulation or other action of the Commissioner in the proceeding for which intervention was sought, or at the requesting petitioner's, intervenor's or participant's option, within 30 days after the conclusion of the entire proceeding, a request for an award of compensation. A petitioner, intervenor or participant requesting that any award ordered be made payable to a specific person or entity, other than the petitioner, intervenor or participant, that represented or advocated on behalf of the intervenor or participant during the proceeding shall include verified authorization to that effect in the request.

(b) The request shall be verified and shall be in compliance with sections 2652.1-2652.4 of this subchapter and shall include, at a minimum:

- (1) a detailed description of services and expenditures;
- (2) legible time and/or billing records, created as soon as possible after the work was performed, which show the date and the exact amount of time spent on each specific task; and
- (3) a description of the petitioner's, intervenor's or participant's substantial contribution citing to the record, including, but not limited to, documents such as: declarations by advocates and/or witnesses, written or oral comments of the petitioner or intervenor or its witnesses regarding a rate application provided to the Department, correspondence with the parties, stipulations or settlement agreements regarding the outcome or material issues in the proceeding, and decision or order by the Department or Commissioner concerning a petition for hearing or rate or class plan application issued without a formal hearing, transcripts, proposed decisions of the Administrative Law Judge and orders demonstrating that a substantial contribution was made for the purpose of complying with section 2661.1(j). Notwithstanding section 2656.4, any confidential correspondence, documents, or declarations referencing confidential information, including but not limited to confidential settlement communications, may be submitted to the Public Advisor with a request for an award of compensation. Any such confidential material submitted to the Public Advisor will retain its confidential status. Nothing in this subsection shall require disclosure of privileged information.

The phrase "exact amount of time spent" as used in this subdivision refers either to five (5) minute or tenth (10th) of an hour increments.

(c) While parties may stipulate to a person's status as an intervenor who is eligible to seek compensation, nothing herein is intended to allow parties to enter into a stipulation regarding whether a person has made a substantial contribution for the purpose of complying with section 2661 of this subchapter.

~~(e)~~ The phrase "each specific task," as used in this subdivision refers to activities including, but is not limited to: (A) telephone calls or meetings/conferences, identifying the parties participating in the telephone call, meeting or conference and the subject matter discussed; (B) legal pleadings or research, identifying the pleading or research and the subject matter; (C) letters, correspondence or memoranda, identifying the parties and the subject matter; and, (D) attendance at hearings, specifying when the hearing occurred, the subject matter of the hearing and the names of witnesses who appeared at the hearing, if any.

~~Nothing in this subsection shall require disclosure of privileged information.~~

~~(d)~~ Within 15 days after service of the request, any other party may submit a response to the request. The response shall be submitted to the Public Advisor and a copy shall also be provided to all parties to the proceeding. The intervenor or participant may reply to any such response within 15 days after service of the response. The reply shall be

submitted to the Public Advisor and a copy shall also be provided to all parties to the proceeding.

(~~ef~~) The Public Advisor shall require an audit and/or may inspect the books and records of the intervenor or participant to the extent necessary to verify the basis for the award. The Public Advisor shall maintain the confidentiality of the intervenor's books and records to the extent allowed by law.

(~~fg~~) Any party questioning the market rate or reasonableness of any amount set forth in the request shall, at the time of questioning the market rate or reasonableness of that amount, provide a statement setting forth the fees, rates, and costs it expects to expend in the proceeding.

AUTHORITY:

Note: Authority cited: Section 1861.10, Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal. Rptr. 2d 807, 847 (1994). Reference: Sections 1861.10(a) and 1861.10(b), Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company et al. v. John Garamendi 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807 (1994).

§ 2662.5. Requirements for Awards

(a) Subject to subdivision (b) herein, advocacy fees, witness fees, and other expenses of participation in a proceeding shall be awarded to any petitioner, intervenor or participant who complies with section 2662.3 and satisfies both of the following requirements:

(1) The petitioner, intervenor or participant's presentation makes a substantial contribution as evidenced by specific citations to the petitioner's, intervenor's or participant's direct testimony, cross-examination, legal arguments, briefs, motions, discovery, declarations by advocates and/or witnesses, written or oral comments of the intervenor or its witnesses regarding a rate application provided to the Department, correspondence with the parties, stipulations or settlement agreements, and decision or order by the Department or the Commissioner on a petition for hearing or rate or class plan application issued without a formal hearing, or any other appropriate evidence; and,

(2) The petitioner, intervenor or participant represents the interests of consumers.

(b) To the extent the substantial contribution claimed by a petitioner, intervenor or participant duplicates the substantial contribution of another party to the proceeding and was not authorized in the ruling on the Petition to Intervene or Participate, the petitioner's, intervenor's or participant's compensation may be reduced. Participation by the Department of Insurance staff does not preclude an award of compensation, so long

as the petitioner's, intervenor's, or participant's substantial contribution to the proceeding does not merely duplicate the participation by the Department of Insurance's staff. In assessing whether there was duplication, the Commissioner will consider whether or not the petitioner, intervenor or participant presented relevant issues, evidence, or arguments which were separate and distinct from those presented by any party or the Department of Insurance staff.

AUTHORITY:

Note: Authority cited: Section 1861.10, Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal. Rptr. 2d 807, 847 (1994). Reference: Sections 1861.10(a) and 1861.10(b), Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company et al. v. John Garamendi 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807 (1994).